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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/608,630
Filing Date: June 27, 2003
Appellant(s): MARTINSSON ET AL.

Brian McGuire
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/24/2009 appealing from the Office action mailed 7/10/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief (on the bottom of page 6) is incorrect. The appellant correctly asserts that claims 1, 3, 14-15, 17, 28 and 48 are rejected but incorrectly asserts that claims 5, 7-12, 19, 21-26, 29-45 and 48 are withdrawn. Claim 48 is not rejected and withdrawn. Claim 48 is simply rejected.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is incorrect. The appellant incorrectly asserts that the second ground of rejection is based on *Fleischer* in view of Applicant's Disclosure, *Parsey*, or *Lamb*. The claims are actually rejected over *Fleischer* in view of Applicant's Disclosure in view of any one of *Parsey* or *Lamb*.

(8) Evidence Relied Upon

4,093,512	FLEISCHER	6-1978
3,800,019	PARSEY	3-1974
6,653,943	LAMB	11-2003

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 3, 14, 15, 17, 28 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,093,512 to Fleischer in view of any one of USPN 3,800,019 to Parsey or USPN 6,653,943 to Lamb.**

Fleischer discloses a papermaking fabric multilayer load bearing coated yarn comprising a multilayer resin sheath (see entire document including column 4, lines 22-50). Fleischer discloses that the load bearing yarn may be a monofilament (column 3, lines 40-46).

Regarding the monofilament being formed before being used in a papermaking fabric, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the

product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Fleischer does not appear to specifically disclose that the layers of the resin sheath are visibly distinguishable from one another and the core by contrasting color or reflectivity, but Fleischer does disclose that yarns are subject to abrasion and wear (column 1, lines 53-61 column 2, lines 10-19, and column 2, lines 48-50) and that the resin is present to improve abrasion resistance or degradation resistance or to improve other desirable qualities into the load bearing yarn structure (paragraph bridging columns 2 and 3). Parsey and Lamb each disclose that it is known in the wear detecting yarn art that a core may be surrounded by a plurality of outer layers of different colors to indicate the degree of wear (see entire documents including column 2, lines 8-29 of Parsey and column 4, lines 20-35 of Lamb). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the multilayer resin sheath of the monofilament of Fleischer with a plurality of outer resin layers of different colors from one another and the core, motivated by a desire to allow for the indication of the degree of wear.

If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. One must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *KSR v. Teleflex*.

Regarding claims 3 and 17, considering that the core and sheath layers are different colors, the indicated level of fabric wear is associated with a wear level through the respective layers.

Regarding claims 14 and 28, Fleischer discloses that a filament wrapping or cover material may be applied to the load bearing coated yarn (column 4, lines 22-36). Therefore, the filament may comprise some or all of a multifilament yarn (Figures 3, 5, 7 and 9).

Regarding claim 15, Fleischer discloses that the load bearing coated yarn may be used to construct an endless industrial fabric (column 3, lines 31-37).

3. Claims 1, 3, 14, 15, 17, 28 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,093,512 to Fleischer in view of Applicant's Disclosure in view of any one of USPN 3,800,019 to Parsey or USPN 6,653,943 to Lamb.

Fleischer discloses a papermaking fabric multilayer load bearing coated yarn comprising a multilayer resin sheath (see entire document including column 4, lines 22-50). Fleischer discloses that the load bearing yarn may be a monofilament (column 3, lines 40-46).

Regarding the monofilament being formed before being used in a papermaking fabric, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Fleischer does not appear to specifically disclose that the layers of the resin sheath are visibly distinguishable from one another and the core by contrasting color or reflectivity, but Fleischer does disclose that yarns are subject to abrasion and wear (column 1, lines 53-61 column 2, lines 10-19, and column 2, lines 48-50) and that the resin is present to improve abrasion resistance or degradation resistance or to improve other desirable qualities into the load bearing yarn structure (paragraph bridging columns 2 and 3). In addition, the current Applicant discloses that a means for monitoring wear on a papermaker's fabric, and particularly at any point on its inner and outer surfaces, even when the paper machine is operating, would be very helpful

to those in the papermaking industry (page 3, lines 7-12 of the Background of the Invention section of the current specification).

Parsey and Lamb each disclose that it is known in the wear detecting yarn art that a core may be surrounded by a plurality of outer layers of different colors to indicate the degree of wear (see entire documents including column 2, lines 8-29 of Parsey and column 4, lines 20-35 of Lamb). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the multilayer resin sheath of the monofilament of Fleischer with a plurality of outer resin layers of different colors from one another and the core, motivated by a desire to allow for the indication of the degree of wear.

If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. One must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *KSR v. Teleflex*.

Regarding claims 3 and 17, considering that the core and sheath layers are different colors, the indicated level of fabric wear is associated with a wear level through the respective layers.

Regarding claims 14 and 28, Fleischer discloses that a filament wrapping or cover material may be applied to the load bearing coated yarn (column 4, lines 22-36). Therefore, the filament may comprise some or all of a multifilament yarn (Figures 3, 5, 7 and 9).

Regarding claim 15, Fleischer discloses that the load bearing coated yarn may be used to construct an endless industrial fabric (column 3, lines 31-37).

(10) Response to Argument

Claims 1, 3, 14, 15, 17, 28 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,093,512 to Fleischer in view of any one of USPN 3,800,019 to Parsey or USPN 6,653,943 to Lamb.

The appellant asserts that Fleischer fails to teach or suggest coating the monofilament yarns before the yarns are formed into a papermaking fabric. The appellant asserts that Fleischer only discloses coating the formed fabric. Appellant's argument is not persuasive for a plurality of reasons. Firstly, the current claims do not require that the fibers be coated prior to the fibers being formed into a papermaking fabric. Rather, the current claims simply require that the fibers be formed before "being used" in a papermaking fabric. The yarns of Fleischer are clearly not used prior to the yarns being coated because the yarns must first be resin coated, as taught by Fleischer, to improve fabric abrasion resistance, degradation resistance, or to impart other desirable qualities to the fabric (paragraph bridging columns 2 and 3). Secondly, Fleischer merely discloses that a "suitable method" for coating the yarns is a method wherein the yarns are coated after the fabric is formed (column 4, lines 47-50). Fleischer actually discloses that the yarns may be coated before the fabric is formed because Fleischer clearly states that the yarns may be resin coated prior to being wrapped by a cover material (column 4, lines 25-30). Thirdly, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production.

In response to the examiner asserting that article taught by the applied prior art is identical to or only slightly different than the claimed article, the appellant asserts that post-fabric coatings fail to (a) cover the whole yarn core and fail to (b) uniformly coat the yarn core. The appellant asserts that the knuckle portions of the fabric of Fleischer, wherein the warp and weft interact, will necessarily include yarn segments wherein the resin fails to uniformly cover the yarn core. The examiner respectfully disagrees. Firstly, as stated above, the current claims do not require that the fibers be coated prior to the fibers being formed into a papermaking fabric. Rather, the current claims simply require that the fibers be formed before “being used” in a papermaking fabric. Secondly, as stated above, Fleischer merely discloses that a “suitable method” for coating the yarns is a method wherein the yarns are coated after the fabric is formed (column 4, lines 47-50). Fleischer actually discloses that the yarns may be coated before the fabric is formed because Fleischer clearly states that the yarns may be resin coated prior to being wrapped by a cover material (column 4, lines 25-30). Thirdly, the appellant fails to currently claim that the sheaths cover the whole core or uniformly coat the core. Therefore, the features upon which applicant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Fourthly, Fleischer clearly illustrates the yarns as being individually coated with a uniform sheath of resin material that uniformly covers the whole yarn core. See Figure 7 wherein the resin sheath (18) uniformly covers the whole yarn core (16).

The appellant asserts that one of ordinary skill in the art would have no reason to adapt the Kevlar coated yarns of Fleischer to possess contrasting sheath colors because such a coating would not provide effective warning. The examiner respectfully disagrees. Fleischer discloses that the coating may comprise a first resin coating layer and a second resin coating layer (column 4, lines 37-50). Therefore, if the exterior resin coating layer is worn away the contrasting color of the underlying resin coating layer and/or the contrasting color of the yellow Kevlar core would provide effective warning.

The appellant alleges that Kevlar material can only be made into multifilament form and thus no material exists in monofilament form, with the modulus specified, that can be used in paper machine clothing that has the other required characteristics. The examiner respectfully disagrees. Firstly, appellant's argument is not persuasive because it is well settled that unsupported arguments are no substitute for objective evidence. *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). Secondly, a multifilament yarn is simply a yarn comprising multiple monofilaments. Therefore, it is not clear how any material can be made into multifilament form but not monofilament form.

The appellant asserts that there is no motivation to combine the references. The examiner respectfully disagrees. Fleischer does not appear to specifically disclose that the layers of the resin sheath are visibly distinguishable from one another and the core by contrasting color or reflectivity, but Fleischer does disclose that the yarns are subject to abrasion and wear (column 1, lines 53-61 column 2, lines 10-19, and column 2, lines 48-50). Parsey and Lamb each disclose that it is known in the abrasion and wear fibrous art that a core may be surrounded by a plurality of outer layers of different colors to indicate the degree of wear (see entire documents including

column 2, lines 8-29 of Parsey and column 4, lines 20-35 of Lamb). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the multilayer resin sheath of the monofilament yarn of Fleischer with a plurality of outer resin layers of different colors from one another and the core, motivated by a desire to allow for the indication of the degree of wear.

If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. One must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *KSR v. Teleflex*.

The appellant asserts that Fleischer and Parsey are non-analogous art. The examiner respectfully disagrees. Firstly, Parsey specifically discloses that the invention relates to fibrous structures of high stretch resistance comprising a polymeric sheath (column 1, lines 4-7) while Fleischer also relates to fibrous structures of high stretch resistance comprising a polymeric sheath (column 1, lines 37-40 and column 2, lines 21-26). Secondly, Parsey relates to fibrous structures subjected to wear (column 2, lines 21-26) while Fleischer also relates to fibrous structures subject to wear (column 1, lines 53-61 column 2, lines 10-19, and column 2, lines 48-50).

The appellant asserts that Fleischer and Lamb are non-analogous art. The examiner respectfully disagrees. Firstly, Lamb specifically discloses that the invention relates to fibrous structures comprising a polymeric sheath (column 1, line 54 through column 2, line 4, column 2, lines 45-50, and column 4, lines 25-34) while Fleischer also relates to fibrous structures comprising a polymeric sheath (column 1, lines 37-40 and column 2, lines 21-26). Secondly, Lamb relates to fibrous structures subjected to wear (column 1, lines 37-40 and column 2, lines 21-26, column 2, lines 45-50, and column 4, lines 25-34) while Fleischer also relates to fibrous structures subject to wear (column 1, lines 53-61 column 2, lines 10-19, and column 2, lines 48-50).

Claims 1, 3, 14, 15, 17, 28 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,093,512 to Fleischer in view of Applicant's Disclosure in view of any one of USPN 3,800,019 to Parsey or USPN 6,653,943 to Lamb.

The appellant asserts that the examiner employs hindsight reasoning to provide motivation to combine references. The examiner respectfully disagrees. Firstly, as indicated above, all the claims are first rejected without citation to the current disclosure. Secondly, the section of the current specification that is cited in the second rejection is that which appears on page 3, lines 7-12 under the "Background of the Invention" section.

The appellant also asserts that the examiner failed to consider the submitted declaration. The examiner respectfully disagrees. The declaration has been considered but was found unpersuasive. See the top of page 2 of the final rejection mailed 7/10/2009 wherein the examiner clearly indicated that the declaration has been entered. Also, see the 'Response to Arguments' section beginning on page 6 wherein all arguments were addressed by the examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrew T Piziali/
Primary Examiner, Art Unit 1794

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/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit 1794

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